
HOUSE BILL No. 1617

DIGEST OF INTRODUCED BILL

Citations Affected: IC 30-2-4.5.

Synopsis: Deposit of real estate transaction funds. Requires that all funds deposited with a fiduciary in connection with a real estate transaction must be submitted for collection to or deposited in an escrow account maintained by the fiduciary at a qualified financial institution under specified terms. Provides that any earnings received on funds deposited in an escrow account of a fiduciary may be retained by the fiduciary as compensation for administration of the escrow account unless there is a contrary written agreement. Places restrictions on the disbursement of funds held in a fiduciary escrow account.

Effective: July 1, 2001.

Pelath, Smith M

January 17, 2001, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1617

A BILL FOR AN ACT to amend the Indiana Code concerning fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 30-2-4.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2001]:

4 **Chapter 4.5. Fiduciary Duties in a Real Estate Transaction**

5 **Sec. 1. The following definitions apply throughout this chapter:**

6 (1) "Fiduciary" means a person with whom funds are
7 deposited by others to be held in escrow for the benefit of the
8 person or persons depositing the funds.

9 (2) "Real estate transaction" means a sale, a purchase, an
10 exchange, or a conveyance of real estate, or any interest in
11 real estate, or the mortgaging of real estate or the leasing of
12 real estate.

13 (3) "Person" means a natural born person, corporation,
14 partnership, trust, limited liability company, voluntary
15 association of two (2) or more persons having a joint or
16 common interest, personal representative of an estate, or a
17 guardian of an estate.



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(4) "Escrow account" means an account maintained at a financial institution by a fiduciary for the purpose of holding funds in escrow for another and includes escrow accounts, settlement accounts, closing accounts, and security deposit accounts.

Sec 2. All funds deposited with a fiduciary in connection with a real estate transaction must be submitted for collection to or deposited in an escrow account maintained by the fiduciary at a qualified financial institution as follows:

(1) If the funds are deposited with the fiduciary at the time of closing the real estate transaction, the funds must be submitted for collection to or deposited in an escrow account with a qualified financial institution not later than the close of the next business day of the fiduciary after the date of receipt of the funds. Funds deposited under this subdivision are the property of the person or persons entitled to them under the provisions of the purchase agreement, loan agreement, or other agreements relative to the real estate transaction for which the funds were deposited with the fiduciary.

(2) If the funds are deposited with the fiduciary before the time of closing the real estate transaction, the funds must be submitted for collection to or deposited in an escrow account with a qualified financial institution not later than the close of the next business day of the fiduciary after the date of:

(A) receipt of the funds; and

(B) receipt of a written agreement acceptable to the fiduciary relative to the holding and disbursing of the funds and signed by:

- (i) the person delivering the funds to the fiduciary; and
- (ii) by any other person who is a party to the purchase agreement upon which the real estate transaction is based.

Funds deposited under this subdivision are the property of the person entitled to them under the provisions of the written agreement accepted by the fiduciary relative to the real estate transaction for which the funds were deposited with the fiduciary.

Sec. 3. Any interest, or account analysis credits, earned or received on funds deposited in an escrow account of a fiduciary may be retained by the fiduciary as compensation for administration of the escrow account unless there is a contrary written agreement signed by the fiduciary and the party depositing



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1 the funds with the fiduciary.

2 **Sec. 4. Disbursements may be made out of an escrow account by**
3 **a fiduciary only if deposits, in an amount at least equal to the**
4 **disbursements, have first been received by the fiduciary or made**
5 **into the escrow account of the fiduciary directly relating to the real**
6 **estate transaction for which the disbursements are being made,**
7 **and only if the deposits are in one (1) of the following forms:**

8 (1) Cash.

9 (2) Wire transfers if the funds are unconditionally received by
10 the financial institution where the fiduciary maintains its
11 escrow account and are credited to the escrow account for
12 immediate disbursement.

13 (3) Checks, drafts, negotiable orders of withdrawal, money
14 orders, and any other item that has been finally paid and
15 credited to the escrow account for immediate disbursement.

16 (4) A depository check, including a certified check, governed
17 by the provisions of the federal Expedited Funds Availability
18 Act, 12 U.S.C. 4001, et seq.

19 (5) Credit transfers through the Automated Clearing House
20 (ACH) that have been considered available by the depository
21 institution receiving the credits. The credits must conform to
22 the operating rules set forth by the National Automated
23 Clearing House Association (NACHA).

24 (6) A check or money order for an amount of one thousand
25 dollars (\$1,000) or less.

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